



Law of Property Act 1969

1969 CHAPTER 59

PART IV **E+W**

RESTRICTIVE COVENANTS

28 Powers of Lands Tribunal and court in relation to restrictive covenants affecting land. **E+W**

(1) In section 84 of the Law of Property Act 1925—

- (a) for the words “The Authority hereinafter defined” in subsection (1), and for the words “the Authority” wherever else they occur, (which now refer to the Lands Tribunal) there shall be substituted the words “the Lands Tribunal”; and
- (b) there shall be made the further amendments provided for by subsections (2) to (9) below;

and accordingly section 84 shall have effect as it is set out in Schedule 3 to this Act with the amendments made by section 52(1) of the ^{M1}Landlord and Tenant Act 1954 and by this section (and the omission of repealed provisions), subject however to any other enactments affecting the operation of section 84 and to subsection (11) below.

^{XI}(2) So much of section 84(1)(a) as follows the words “obsolete, or” shall be a separate paragraph (aa) and shall be amended as follows:—

- (a) after the word “that” there shall be inserted the words “in a case falling within subsection (1A) below” ;
- (b) for the words “the reasonable user” there shall be substituted the words “some reasonable user” ; and
- (c) the words “without securing practical benefits to other persons” shall be omitted ;

and after section 84(1) there shall be inserted as new subsections (1A), (1B) and (1C):

—
“(1A) Subsection (1)(aa) above authorises the discharge or modification of a restriction by reference to its impeding some reasonable user of land in any

Status: Point in time view as at 13/10/2003.

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case in which the Lands Tribunal is satisfied that the restriction, in impeding that user, either—

- (a) does not secure to persons entitled to the benefit of it any practical benefits of substantial value or advantage to them ; or
- (b) is contrary to the public interest ;

and that money will be an adequate compensation for the loss or disadvantage (if any) which any such person will suffer from the discharge or modification.

(1B) In determining whether a case is one falling within subsection (1A) above, and in determining whether (in any such case or otherwise) a restriction ought to be discharged or modified, the Lands Tribunal shall take into account the development plan and any declared or ascertainable pattern for the grant or refusal of planning permissions in the relevant areas, as well as the period at which and context in which the restriction was created or imposed and any other material circumstances.

(1C) It is hereby declared that the power conferred by this section to modify a restriction includes power to add such further provisions restricting the user of or the building on the land affected as appear to the Lands Tribunal to be reasonable in view of the relaxation of the existing provisions, and as may be accepted by the applicant ; and the Lands Tribunal may accordingly refuse to modify a restriction without some such addition.”

^{XI}(3) In section 84(1) there shall be omitted the words “(subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order)” and the proviso, and after paragraph (c) there shall be inserted the words “and an order discharging or modifying a restriction under this subsection may direct the applicant to pay to any person entitled to the benefit of the restriction such sum by way of consideration as the Tribunal may think it just to award under one, but not both, of the following heads, that is to say, either—

- (i) a sum to make up for any loss or disadvantage suffered by that person in consequence of the discharge or modification ; or
- (ii) a sum to make up for any effect which the restriction had, at the time when it was imposed, in reducing the consideration then received for the land affected by it.“

^{XI}(4) In section 84(2), in the phrase “is affected” in paragraph (a), and in the phrase “is enforceable” in paragraph (b), there shall in each case be inserted after the word “is” the words “or would in any given event be” ; and at the end of section 84(2) there shall be added the words:—

“Neither subsections (7) and (11) of this section nor, unless the contrary is expressed, any later enactment providing for this section not to apply to any restrictions shall affect the operation of this subsection or the operation for purposes of this subsection of any other provisions of this section.”

^{XI}(5) In section 84(3) in the phrase “any local authority” there shall be inserted after the word “any” the words “government department or”.

^{XI}(6) After section 84(3) there shall be inserted as a new subsection (3A) :—

“(3A) On an application to the Lands Tribunal under this section the Lands Tribunal shall give any necessary directions as to the persons who are or are not to be admitted (as appearing to be entitled to the benefit of the restriction) to oppose the application, and no appeal shall lie against any such direction ; but rules

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under the Lands Tribunal Act 1949 shall make provision whereby, in cases in which there arises on such an application (whether or not in connection with the admission of persons to oppose) any such question as is referred to in subsection (2)(a) or (b) of this section, the proceedings on the application can and, if the rules so provide, shall be suspended to enable the decision of the court to be obtained on that question by an application under that subsection, or by means of a case stated by the Lands Tribunal, or otherwise, as may be provided by those rules or by rules of court.”

^{F1}(7)

(8) ^{F2}

^{X1}(9) In section 84(11) after the word “nor” there shall be inserted the words “subject to subsection (11A) below” ; and after section 84(11) there shall be inserted as a new subsection (11A):—

“(11A) Subsection (11) of this section—

- (a) shall exclude the application of this section to a restriction falling within subsection (11)(a), and not created or imposed in connection with the use of any land as an aerodrome, only so long as the restriction is enforceable by or on behalf of the Crown ; and
- (b) shall exclude the application of this section to a restriction falling within subsection (11)(b), or created or imposed in connection with the use of any land as an aerodrome, only so long as the restriction is enforceable by or on behalf of the Crown or any public or international authority.”

^{X1}(10) In section 38(3) of the ^{M2}Requisitioned Land and War Works Act 1945 (under which section 84 of the ^{M3}Law of Property Act 1925 does not apply to a covenant obtained under the Defence Acts, so long as the covenant is enforceable on behalf of the Crown) for the words “any covenant obtained under the Defence Acts” there shall be substituted the words “any restriction created or imposed under the Defence Acts or under section 13 (acquisition of land for oil installations) of the ^{M4}Land Powers (Defence) Act 1958”, and for the words “the covenant” there shall be substituted the words “the restriction”.

(11) This section applies to restrictions whether subsisting at the time it comes into force or created or imposed thereafter, but—

- (a) the coming into force of any provision of this section other than subsection (6) shall not affect proceedings then pending; and
- (b) subsection (6) shall not come into force until such date as the Lord Chancellor may appoint by order made by statutory instrument, which shall be laid before Parliament after being made.

Editorial Information

X1 The text of s. 28(2)–(7)(9)(10) is in the form in which it was originally enacted: it was not reproduced in Statutes in Force and does not reflect any amendments or repeals which may have been made prior to 1.2.1991.

Textual Amendments

F1 S. 28(7) repealed (13.10.2003) by [Land Registration Act 2002 \(c. 9\)](#), s. 136(2), [Sch. 13](#) (with s. 129, [Sch. 12 para. 1](#)); [S.I. 2003/1725](#), art. 2(1)

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F2 S. 28(8) repealed by [Civil Aviation Act 1982 \(c. 16, SIF 9\)](#), s. 109(3), **Sch. 16**

Marginal Citations

M1 1954 c. 56.

M2 1945 c. 43.

M3 1925 c. 20.

M4 1958 c. 30.

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